

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-5 and 12-19 remain withdrawn from consideration and claims 6-11, 20-29, 31, and 33-38 remain pending. Of the pending claims, claims 6, 20, 25, 29, 31, 35, 36, 37, and 38 are independent.

§ 103 REJECTION - SUZUKI, KAMIKURA, AIGN

The Examiner specifically rejected claims 6-11 and 20-32 under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, et al. (USP 6,031,575, hereinafter "Suzuki") in view Kamikura (USP 6,266,370, hereinafter "Kamikura) and in further view of Aign, et al. (MPEG-4 Video Transmission via DAB" Error Detection and Error Concealment and "MPEG-4 Video Verification Model Version 7.0" ISO-IEC/JTC1/SC29/WG11 N1642, April 1997, section 2.1 MPEG-4 Video Coding, hereinafter "Aign"). See *Final Office Action*, page 2, Item 2. However, it is noted that claims 30 and 32 were cancelled in a previous Reply. Thus, the rejection of claims 30 and 32 no longer applies.

In addition, the Examiner included claims 33-38 in this section of the final Office Action. *See page 4, second paragraph from the bottom.* Therefore, Applicants will regard that all pending claims - claims 6-11, 20-29, 31, and 33-38 - are rejected as being obvious over Suzuki, Kamikura and Aign. Applicants respectfully traverse.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established. *See M.P.E.P. 2142.* One requirement to establish *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. *See M.P.E.P. 2142; M.P.E.P. 706.02(j).* Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, independent claim 6, 20, 29, and 31 recite, in part, "the display speed information being included as a codeword in the header information area for a layer that is above a VOP layer and comprises a plurality of VOPs"; independent claim 25, recites in part, "start code indicates a header information area for a layer that is above a VOP layer"; independent claims 35 and 36 recite, in part, "the VOP rate

information being included as a codeword in the header information area for a layer that is above a VOP layer and comprises a plurality of VOPs"; and claims 37 and 38 recite, in part, "the VOP rate flag information being included as a codeword in the header information area for a layer that is above a VOP layer and comprises a plurality of VOPs." In the final Office Action, the Examiner asserts that Suzuki, in column 46, lines 48-53, discloses this feature. *See final Office Action, page 2, Item 2, last paragraph.*

Contrary to the Examiner's assertion, Suzuki may not be relied upon to teach or suggest at least this feature. The relied upon portion specifically states, "FIG. 32 shows header information **associated with a VOP layer.**" *Emphasis added.* If the header information is associated with the VOP layer, then it **cannot** be the header information area for the layer that is **above** the VOP layer. Indeed, the referenced portion of Suzuki teaches away from this recited feature of the independent claims. Therefore, the independent claims are distinguishable over Suzuki.

The independent claims are also distinguishable over Suzuki for other reasons. For example, claims 6, 20, 29, and 31 recite

that the display speed information indicates a number of VOPs displayed per unit time. In the final Office Action, the Examiner asserts that the flag `VOP_temp_ref` of the VOP header is equivalent to the display speed information. The Examiner's assertion fails.

First, Suzuki merely indicates that the `VOP_temp_ref` flag indicates a time interval a display of a current VOP from the previous VOP, as the Examiner has admitted. Time interval is clearly not equivalent to indicating a number of VOP displayed per unit time. But more importantly, as noted above, this flag is part of the VOP header as disclosed in Suzuki. The `VOP_temp_ref` flag **cannot** be part of the header that is above the VOP layer.

Indeed, Suzuki is silent regarding any headers for layers above the VOP layer. Then it logically follows that Suzuki is silent regarding the contents of the header information area for a layer above the VOP layer. In other words, Suzuki cannot be relied upon to teach or suggest the display speed information being included as a codeword in the header information for a layer above the VOP layer as recited in independent claims 6, 20, 29, and 31.

Likewise, because Suzuki is silent regarding contents, Suzuki cannot be relied upon to teach or suggest the VOP rate information (claims 35 and 36) or the VOP rate flag information (claims 37 and 38) being included as a codeword in the header information for a layer above the VOP layer.

Also regarding independent claims 29, 31, 37, and 38, it is noted that the claims recite, in part, "header information area is separate from the data area that contains a series of VOPs." It is to be noted that Suzuki is related to a space scalable encoding process in which a plurality of VOPs in a same timing corresponding to different layers are synchronized and reproduced. Referring back to the relied upon portion of Suzuki, Figures 33A and 33B of Suzuki has both variable-length frames and fixed-length frames. Suzuki's object is to synchronize different layers in a same display timing. This clearly cannot be the same as a data area that contains a series of VOPs.

Neither Kamikura nor Aign has been, and indeed cannot be, relied upon to correct for at least the above noted deficiencies of Suzuki. Therefore, independent claims distinguishable over the combination of Suzuki, Kamikura and Aign.

U.S. Application No. 09/545,172
Docket No. 1163-0268P
September 30, 2004
Art Unit: 2613
Page 25 of 26

Claims 7-11, 21-24, 26-28, 31, and 33-34 depend from independent claims 6, 20, 25, 29, and 31 directly or indirectly. Therefore, these dependent claims are also distinguishable over the combination of Suzuki, Kamikura, and Aign for at least the reason stated with respect to the independent claims as well as on their own merit.

Applicants respectfully request that the rejection of claims 6-11, 20-29, 31 and 33-38, based on Suzuki, Kamikura, and Aign, be withdrawn.

CONCLUSION

All objections and rejections raised in the Final Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

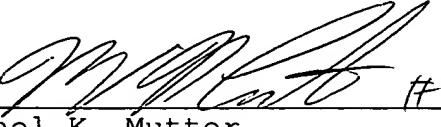
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional

U.S. Application No. 09/545,172
Docket No. 1163-0268P
September 30, 2004
Art Unit: 2613
Page 26 of 26

fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly,
extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 
f/r Michael K. Mutter

Reg. No. 29,680 

MKM/HNS/lab
1163-0268P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000